

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JACKSON NEELY,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:04CV1668 HEA
)	
TROY STEELE,)	
Respondent,)	
)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254. [Doc. No. 5]. The Court referred this matter to Magistrate Judge Thomas C. Mummert, III for a Report and Recommendation pursuant to 28 U.S.C. § 636. Judge Mummert has filed his Report and Recommendation that the Petition be denied. No objections to the Report and Recommendation have been filed within the prescribed time period.

After careful consideration, the Court will adopt and sustain the sound reasoning of Judge Mummert as set forth in his February 7, 2008 Report and Recommendation.

Certificate of Appealability

The federal statute governing certificates of appealability provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial

showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A substantial showing of the denial of a constitutional right requires that “issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). Based on the record, and the law as discussed in Judge Mummert’s Report and Recommendation, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right.

Accordingly,

IT IS HEREBY ORDERED that the Amended Petition of Jackson Neely, for Writ of Habeas Corpus, [Doc. No. 5], pursuant to 28 U.S.C. § 2254 is **DENIED**.

IT IS FURTHER ORDERED that a Certificate of Appealability will not issue in that, as Petitioner has not made a substantial showing of the denial of a federal constitutional right.

A separate judgment in accordance with this Memorandum and Order is entered this same date.

Dated this 29th day of February, 2008.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE